

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Jessie D. McDonald,

Plaintiff,

v.

Civil No. 08-5069 (JNE/JSM)  
ORDER

Overnite Express, Inc.,  
Quail Trucking, Ltd., and  
Transport Leasing Contract, Inc.,

Defendants.

This case is before the Court on a Report and Recommendation issued by the Honorable Janie S. Mayeron, United States Magistrate Judge, on May 11, 2010. The magistrate judge recommended that Plaintiff's Motion for Summary Judgment be denied as moot, that the Motion to Dismiss and Further Motion for Sanctions of Overnite Express, Inc., and Quail Trucking, Ltd., be granted, that Plaintiff's Motion for Default Judgment be denied, and that Plaintiff's claims against Overnite Express and Quail Trucking be dismissed with prejudice. Plaintiff objected to the Report and Recommendation. The Court has conducted a de novo review of the record. *See* D. Minn. LR 72.2(b). Based on that review, the Court adopts the Report and Recommendation.

Also before the Court is Plaintiff's e-mail request dated March 15, 2010, seeking permission to file a statement of poverty, rather than an affidavit, in support of his application to proceed on appeal in forma pauperis (IFP). Plaintiff was granted IFP status before the district court. Consequently, Plaintiff may proceed on appeal IFP if and when Plaintiff files a timely notice of appeal with the Clerk of Court unless the Court "certifies that the appeal is not taken in good faith" or finds that Plaintiff is "not otherwise entitled to proceed in forma pauperis." *See*

Fed. R. App. P. 24(a)(3)(A). Plaintiff's request to file a statement of poverty is therefore denied as moot.<sup>1</sup>

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. The May 11, 2010, Report and Recommendation [Docket No. 151] is ADOPTED.
2. Plaintiff's Motion for Summary Judgment [Docket No. 70] is DENIED AS MOOT.
3. Overnite Express and Quail Trucking's Motion to Dismiss [Docket No. 123] is GRANTED.
4. Overnite Express and Quail Trucking's Further Motion for Sanctions [Docket No. 131] is GRANTED.
5. Plaintiff's Motion for Default Judgment [Docket No. 145] is DENIED.
6. Plaintiff's request to file a statement of poverty is DENIED AS MOOT.
7. Plaintiff's claims against Overnite Express and Quail Trucking are DISMISSED WITH PREJUDICE.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 9, 2010

s/ Joan N. Ericksen  
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JOAN N. ERICKSEN  
United States District Judge

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<sup>1</sup> Plaintiff attached a "Notice of Appeal" to the e-mail request. Plaintiff's March 15 Notice of Appeal was premature because final judgment had not yet been entered. *See* 28 U.S.C. § 1291 (2006); *Huggins v. FedEx Ground Package Sys., Inc.*, 566 F.3d 771, 773 (8th Cir. 2009). Moreover, a notice of appeal must be filed with the Clerk of Court. *See* Fed. R. App. P. 3(a)(1) ("An appeal . . . may be taken only by filing a notice of appeal with the district clerk.").